

**PLANNING COMMITTEE**  
**22 JULY 2020**  
**REPORT ON APPEAL DECISIONS**  
**1 JANUARY TO 30 JUNE 2020**

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

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## Summary

This report informs Members of appeal decisions. The summary of appeal decisions for those allowed or where decisions were made by the Committee contrary to officer recommendation is listed by Ward in Appendix A.

A total of 29 appeal decisions were received between 1 January and 30 June 2020, including 4 relating to enforcement. 5 were allowed, 1 of which was for enforcement, and 24 were dismissed.

Information on appeal cost decisions is set out in Appendix B.

1. Budget and Policy Framework
  - 1.1 There are no budget and policy framework decisions arising directly from this report. This is an information item for the planning committee.
2. Background
  - 2.1 When a planning application is refused, the applicant has the right to appeal. The timescale for lodging an appeal varies depending on whether the application relates to a householder matter, non householder matter or whether the proposal has also been the subject of an Enforcement Notice.
  - 2.2 Appeals can also be lodged against conditions imposed on a planning approval and against the non-determination of an application that has passed the statutory time period for determination.
  - 2.3 Where the Council has taken enforcement action through the serving of an Enforcement Notice then an appeal can be lodged in relation to that. An appeal cannot be lodged though in relation to a breach of condition notice on

the basis primarily that if the individual did not like the condition then they could have appealed against that at the time it was originally imposed.

2.4 The appeals are determined by Inspectors appointed by the Secretary of State and administered by the Planning Inspectorate, which informs Medway Council of the Inspector's decision.

2.5 In accordance with the decision made at the Planning Committee on Wednesday 5 July 2017, appendix A of this report will not summarise all appeal decisions but only either those which have been allowed on appeal or where Members made a contrary decision to the officers' recommendation.

### 3. Advice and analysis

3.1 This report is submitted for information and enables Members to monitor appeal decisions.

### 4. Risk management

4.1 Monitoring of all appeal decisions is undertaken to ensure that the Councils decisions are being defended thoroughly and that appropriate and defensible decisions are being made by Committee and under delegated powers. The lack of any monitoring could lead to more decisions going contrary to the Council decisions resulting in poorer quality development and also costs being awarded against the Council.

4.2 The quality of decisions is reviewed by Government and the threshold for designation on applications for both major and non-major development is 10% of an authority's total number of decision. The most up-to-date Government data, which is for the 24 months to the end of September 2018, shows the number of decisions overturned at appeal for major applications is 2.5% and 1.0% for non-major applications. Where an authority is designated as underperforming, applicants have the option of submitting their applications directly to the Planning Inspectorate.

### 5. Financial implications

5.1 An appeal may be determined after a Public Inquiry, a Hearing or written representations. It is possible for cost applications to be made either by the appellants against the Council or vice versa if it is alleged that either has acted in an unreasonable way. Powers have now been introduced for Inspectors to award costs if they feel either party has acted unreasonably irrespective of whether either party has made an application for costs.

5.2 It is possible for decisions made by Inspectors on appeal to be challenged through the courts but only if it is considered that an Inspector has erred in law, for instance by not considering a relevant issue or not following the correct procedure. A decision cannot be challenged just because an Authority does not agree with it. A successful challenge would result in an Inspector having to make the decision again in the correct fashion, e.g. by taking into account the relevant factor or following the correct procedure. This may lead ultimately to the same decision being made.

5.3 It is possible for planning inspectors to make a “split” decision, where they allow one part of an appeal but not another. This is not possible for the Council when it makes its original decision on the planning application other than for an advert application.

## 6. Recommendations

6.1 The Committee consider and note this report which is submitted to assist the Committee in monitoring appeal decisions.

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### Appendices

- A) Summary of appeal decisions
- B) Appeal costs

### Background papers

Appeal decisions received from the Planning Inspectorate for the period 1 January to 30 June 2020.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/01/2020 and 31/06/2020**

**MC/17/3126**

**The Paddock (Adjacent Sandhurst Farm) Sharnal Street, High Halstow –  
Peninsula Ward**

Refusal – 15 May 2018 - Delegated

Change of use of land to use as residential caravan site for one gypsy family with two caravans including one static caravan together with construction of amenity building and laying of hard standing

Allowed with conditions – 14 January 2020

**Summary**

The main issues relate to the principle of development in the countryside and the effect of the development on the character and appearance of the surrounding area; whether the location of the development results in an adverse impact on the living conditions of its occupants and nearby residents; whether the appellant meets the definition of gypsy/traveller; and availability of accommodation for gypsies and travellers.

The development site, formerly a paddock, is outside the limits of a rural settlement, constituting development in the countryside. Therefore the Council asserts that the principle of the development is not acceptable.

The site is not in the immediate vicinity of the flat or undulating farmland which is key to the 'Hoo Peninsula Farmland' landscape character. It is bounded on the west by Sharnal Street and Fishers Wood and is near to residential dwellings to the north, east and south. The site is some 1250m from High Halstow where there is a grocery store and a primary school, and within 500m of bus stops giving access by public transport to more service available in Hoo and Rochester and therefore meets criterion which requires gypsy sites to be close to essential local services.

There is some uncertainty as to whether the site is within a wider area benefiting from a lawful development certificate relating to a contractors yard. This makes it difficult to conclude that the land described as a former paddock, is previously developed land. There would be no loss of valued views and the harm due to loss of openness is compromised only to a limited extent by the siting of the development.

The Council accepts that the site is screened on all elevations with fencing, trees and hedgerow and is a reasonable level of screening for a site of this size. It also accepts the design and appearance of the mobile home and tourer to be standard and therefore there is not much to consider in relation to design of the caravans. The Council also considers the scale of the proposed amenity block would not be unduly prominent or out of place as an outbuilding in a plot of this size. The Inspector was of the view that, as approximately only half the building would protrude above the fence line it would not have an unacceptable adverse visual impact in views from the road.

It is acknowledged that there are a small group of mobile homes on a site occupied by travellers off Parbrook Road, which is some distance to the south east, but do not impinge on the character and appearance of the appeal site.

It is of some concern that the appeal site is enclosed on three sides by several plots containing substantial and traditionally built dwelling houses and that the development would undermine somewhat the distinctive character of this group of dwellings close by.

The Inspector concluded that as the development is relatively small scale and self-contained and not in a designated or protected area the loss of openness and encroachment into the countryside is limited. There is also no objection to the access arrangements and there is adequate provision of power, water and sewerage. The Inspector also considered the development is not intrusive within the street scene and its appearance is similar to touring vans in other plots in the area.

The Inspector felt that as no air quality assessment has been provided it could not be certain whether occupants of the development would experience poor living conditions or health due to poor air quality. However the use of green infrastructure, in particular trees, on the site could create a barrier or maintain separation between sources of pollution and this could be managed by the provision of a site development condition.

The Inspector considered the Council's proposal to impose a condition to provide for noise mitigation as it felt living in caravans is noisier than houses. The Inspector felt if excessive noise were to occur, this could be addressed by other means, including environmental health controls if necessary. However, a condition providing for approval of a site layout and landscaping scheme, would ensure an acceptable configuration of the structures and boundary treatment that would minimise the potential for adverse impact on residents nearby.

The Council denies that the appellant or any member of his family is a traveller within the definition in PPTS. A Council officer completed a questionnaire on behalf of the appellant to establish traveller status as he cannot read or write. Given the likelihood that the appellant was stressed when interviewed, the Inspector felt is likely that he did not take in the full purport of each precise question. The Council failed to have the appellant sign or make his mark to acknowledge the replies. Overall, the Inspector was satisfied that on the balance of probability that the appellant, and his family group, are of a nomadic habit of life with an economic purpose and has no intention of abandoning that way of life. The Inspector considers this satisfies the definition of 'traveller' for the purposes of PPTS and concluded that more than sufficient information has been submitted in relation to the applicant and his family that supports the statement that they are a traveller family.

The Inspector is satisfied that, as there are no alternative gypsy/traveller sites available, the needs of the family could not reasonably be met by occupying, purchasing or renting an existing residential dwelling elsewhere within the area or within a neighbouring authority.

The Council agreed, it cannot show there is a 5 year deliverable supply of pitches to meet gypsy and traveller needs within the Medway area. The Inspector concluded the appellant's circumstances are such that he has no realistic choice but to occupy the site with his children and accords this significant weight in this appeal.

The appellant applied for permission to use the appeal site residentially and appealed against the Council's refusal when he was presented with little option but to unlawfully occupy the land as a caravan site. The Inspectorate concluded that the shortage of alternative sites and the circumstances of the appellant and his family must reduce the weight given to the unlawfulness of the occupation. For this reason and for the reasons above the appeal is allowed and the enforcement notice is quashed.

## **MC/19/1255**

### **126 Watling Street, Strood – Strood North Ward**

Refusal – 29 August 2019 – Delegated

Retrospective application for engineering works to facilitate the construction of a hard standing area and boundary walls to front

Allowed – 31 January 2020

### **Summary**

The appeal site is located on the northern side of Watling Street. The properties along this section of Watling Street comprise mainly of detached dwellings that sit higher than the public footway and are setback considerably. The main public footway does not abut the boundary treatment of the appeal site or its immediate neighbours and there is a considerable distance to these which are separated by a green area.

The main issue is the effect of the development on the character and appearance of the area.

The development comprises of a brick wall interspersed with pillars. There is a gap in the wall to provide the driveway. The boundary wall measures 2.3m high and the Council considers this to be excessive. This is the height of the piers and much of the wall is lower. The Inspector felt the solid brick used for the development relates well to the surrounding area and takes the view that due to the elevated position of the dwelling, it does not provide a sense of enclosure and is not intrusive or dominant as it does not detract from the open street scene.

The Council do not raise any concerns with regards to the hard standing for the driveway and the Inspector does not disagree.

The Inspector considered the Council's argument that the grant of planning permission would set a precedent for other similar developments. Given that the Inspector concludes that the development is acceptable there is no reason why similar development of other sites in the area would lead to harm.

As the development has already been constructed and the materials used are acceptable the Inspector concluded there is no need to impose conditions.

## **MC/19/1600**

### **Land at Gun Lane, Rochester – Strood North Ward**

Approval with Conditions – 8 August 2019 – Delegated

Advertised consent for installation of an internally illuminated 48 sheet digital advertisement display (removal of existing advertisement displays)

Allowed – 23 January 2020

### **Summary**

The appeal site is located near to the junction of Gun Lane with A228 and North Street. The proposed sign would be located facing south west such that the illuminated display would only be visible to drivers approaching along Gun Lane from the south.

The main issue is whether Conditions 1 and 8 of the advertisement consent are necessary or reasonable in all other respects.

Condition 1 restricts the period of consent to one year and requires the sign and associated frame to be removed unless otherwise agreed in writing. The Inspector noted there are few other traffic information signs or illuminated signage in the vicinity of the appeal site and therefore considered the proposal would not obscure or hinder the interpretation of any traffic signs. Also, as the sign would be raised approximately 2.5m above ground, it would be viewed from a reasonable distance as drivers approach from the south providing adequate opportunity for drivers and pedestrians to assimilate the advertisement as they approach. The proposal would also remove the larger existing sign and as the sign would be positioned perpendicular to the highway would provide limited additional distraction to pedestrians and motorists compared with the existing signs. In addition, the sign would not be sited directly opposite nearby residential properties and would be unlikely to cause any detrimental effects in this respect. As it is unlikely that there would be adverse effects on public safety, the Inspector concluded a one-year limit on express consent is not justified.

Condition 8 restricts the rate of change of display to once every 15 seconds rather than once every 10 seconds as applied for. The Inspector acknowledged the proximity to the school but considered there is little evidence to indicate that the increased rate of change of display would harm visual amenity or public safety compared with the slower rate.

## **MC/19/2548**

### **191 Fairview Avenue, Wigmore, Gillingham – Hempstead and Wigmore Ward**

Refusal – 18 November 2019 – Delegated

Construction of a detached double garage

Allowed with conditions – 26 March 2020

## **Summary**

The appeal site stands on a roughly square-shaped plot at the junction with Maidstone Road. The existing 2-storey detached house is set well back from both road frontages. The proposed new garage, store and gym would be housed in a single-storey building, sited within the front garden, between the house and the street corner.

The Council considered that by reason of its siting, scale and bulk, the proposed development would result in an obtrusive form of development that would be unduly prominent and would have a detrimental impact on the character and appearance of the street scene.

The Inspector felt that elsewhere along Fairview Avenue and Maidstone Road there is a good deal of variation in building lines, in particular No 232 Fairview Road and No 554 Maidstone Road. The proposed new building would stand further back from Maidstone Road than either of these and slightly closer to Fairview Avenue but the Inspector considered this would be offset by its smaller footprint and hipped roof. Given that both of the appeal site's frontages are enclosed by walls and fencing of up to 2m in height, the Inspector also considered that little more than the roof of the proposed new building would be seen.

Furthermore, the Inspector concluded the new building would have proportions comparable to No 232 and therefore appear as a visual counterpart to No 232, creating a pleasant sense of enclosure and coherence between the two sides of Fairview Avenue.

The Inspector imposed conditions ensure the control of materials to secure a satisfactory appearance and a restriction to domestic use only, in the interests of safeguarding the living conditions of neighbouring residents.

## **ENF/19/0012**

**See appeal summary for MC/17/3126 above**

**The Paddock (Adjacent Sandhurst Farm) Sharnal Street, High Halstow – Peninsula Ward**

Refusal – 15 May 2018 - Delegated

Change of use of land to use as residential caravan site for one gypsy family with two caravans including one static caravan together with construction of amenity building and laying of hard standing

Allowed with conditions – 14 January 2020

## **Summary**

As the appeal against the refusal of MC/17/3126 (see above) was successful the enforcement notice was quashed.



## APPENDIX B

### Report on Appeal Costs

<u>Appeals 2019/2020</u>				
Site	Proposal	Decision type	Costs	Comment
<b>260 Wilson Avenue Rochester</b>	<b>Rear extension + dormer window to side,</b>	<b>High Court judgement on Judicial Review</b>	<b>against</b>	<b>25/07/2019 : £12,938 paid to Mr McLennan of 262 Wilson Avenue</b>
		<b>Court order</b>		<b>24/09/2019 : £1,871 paid to Mr McLennan</b>
<b>Coombe Lodge, Coombe Farm Lane St Mary Hoo</b>	<b>Demolition of stable + 2 bed holiday let</b>		<b>Partial against</b>	<b>(Costs covering work on PROW issue)</b>
<b>Plot 1, Medway City Estate</b>	<b>Retail development + drive through restaurant</b>		<b>against</b>	<b>January 2020 : costs paid £48,625.02 + VAT</b>

<u>Appeals 2020/2021</u>				
Site	Proposal	Decision type	Costs	Comment
<b>r/o 48 – 52 Napier Road, Gillingham</b>	<b>Enforcement notice re 6 self-contained flats without planning permission</b>	<b>Enforcement notice upheld for flats A,B and C but not for flats D,E and F 46 Napier Rd</b>	<b>Partial for</b>	<b>Applicant demonstrated unreasonable behaviour resulting in unnecessary and wasted expense re the adjournment of the 11/09/2019 inquiry. Costs being pursued.</b>
<b>Land at 20 – 22 Hillside Avenue, Strood</b>	<b>Enforcement notice re 10 self-contained flats without planning permission</b>	<b>Enforcement notice upheld but deadlines extended</b>	<b>Partial for</b>	<b>Inspector found unreasonable behaviour resulting in unnecessary or wasted expense. Costs being pursued.</b>